
INVITATION FOR BIDS

IFB HHSC FY07-100

FOR COMPETITIVE SEALED BIDS TO PROVIDE:

Rental of Radiographic/Fluoroscopy Machine

For

**HAWAII HEALTH SYSTEMS HOSPITALS
Db a West Kauai Medical Center**

(LEGAL ADVERTISEMENT DATE: 27 June 2006)

AN AGENCY OF THE STATE OF HAWAII

(Advertisement)

**HAWAII HEALTH SYSTEMS CORPORATION
INVITATION FOR BID
IFB NO. HHSC FY 07-100**

The Hawaii Health Systems Corporation (HHSC), dba West Kauai Medical Center is requesting bid proposals from qualified applicants to provide rentals for a radiographic/fluoroscopy (R/F) machine for five (5) years.

Persons interested in obtaining a proposal packet may obtain a copy at West Kauai Medical Clinic, c/o Regional Contracts Manager Office, 4643 Waimea Canyon Road, Waimea, HI 96796, or request a copy on line at dlane2@hhsc.org or www.hawaii.gov/spo.

Submittal of proposals must be **postmarked by midnight** or received and time stamped by the West Kauai Medical Center on **July 21, 2006 by 3:00 p.m., Hawaii Standard Time**. Proposals received after the above date and time will not be considered and returned unopened to the applicant. HHSC reserves the right to cancel this bid at any time and reject any proposal in whole or in part.

Inquires may be directed to David Lane, Ph.D., Regional Contracts Manager, at (808) 338-9468; (808) 240-2745 (Fax).

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SECTION 1 **ADMINISTRATION**

1.1 INTRODUCTION

This IFB is issued by the Hawaii Health Systems Corporation (HHSC), dba West Kauai Medical Center (WKMC), an Agency of the State of Hawaii. WKMC desires to rent a radiographic/fluoroscopy (R/F) machine for five (5) years. The following sections contain the requirements for proposal applications, bid forms, general terms, and other information.

Persons or organizations must submit five (5) sets (Original plus four (4) copies) AND one electronic version (.pdf file is acceptable) of their completed proposals **and the hard copy proposal must be postmarked before midnight on, or hand-delivered by 3:00 p.m. Hawaii Standard Time, July 21, 2006** to the following address:

David Lane, Ph.D.
Kauai Regional Contracts Manager
West Kauai Medical Center
P.O. Box 337
Waimea, HI 96797
Dlane2@hhsc.org

Thank you for your interest in submitting a bid for this solicitation. The rationale for this competitive sealed bid is to promote and ensure the fairest, most efficient means to obtain the benefits of the most responsive and responsible lowest dollar bid. In order for HHSC to evaluate your response, please follow the instructions presented in this document.

1.2 IFB ORGANIZATION

This IFB is organized into five sections:

SECTION 1: ADMINISTRATIVE

Provides Bidders with information regarding administrative requirements.

SECTION 2: SCOPE OF SERVICES

Provides Bidders with a description of goods and/or services to be provided; and, delineates HHSC and Contractor (CONTRACTOR) responsibilities.

SECTION 3: BID PREPARATION & SUBMISSION

Describes bid preparation and submission procedures/requirements.

SECTION 4: BID OPENING & EVALUATION

Describes bid opening and evaluation procedures/requirements.

SECTION 5: AWARD OF CONTRACT

Describes selection and award of contract procedures/requirements.

1.3 HEAD OF THE PURCHASING AGENCY

The Head of the Purchasing Agency (HPA) for HHSC is authorized to execute any and all Agreements (Contracts), resulting from this IFB. The HPA for this IFB is:

THOMAS M. DRISKILL, JR.
President & Chief Executive Officer
Hawaii Health Systems Corporation

1.4 DESIGNATED OFFICIALS

The Officials identified in the following paragraphs have been designated by the HPA as HHSC's Procurement Officials responsible for execution of this IFB, award of contract and coordination of CONTRACTOR satisfactory completion of contract requirements.

1.4.1 ISSUING OFFICER

The Issuing Officer is responsible for administering/facilitating all requirements of the IFB solicitation process and is the sole point of contact for Bidders from the date of release of the IFB until the selection of the successful Bidder. The Issuing Officer will also serve as a Contract Administrator responsible for "contractual actions" throughout the term of the contract. The Issuing Officer is:

DAVID LANE, Ph.D.
Regional Contracts Manager--Kauai
(808) 338-9468
(808) 240-2745 (Fax)
dlane2@hhsc.org

1.5 HHSC ORGANIZATIONAL INFORMATION

1.5.1 CHARTER AND MISSION

HHSC is a public body corporate and politic and an instrumentality and agency of the State of Hawaii. HHSC is administratively attached to the Department of Health, State of Hawaii and was created by the legislature with passage of Act 262, Session Laws of the State of Hawaii 1996. Act 262 affirms the state's commitment to provide quality health care for the people in the State of Hawaii, including those served by small rural facilities.

1.5.2 STRUCTURE AND SERVICES

HHSC oversees the operations of 12 public health facilities (11 hospitals and 1 free-standing, long term care facility) throughout the Hawaiian Island chain, including Oahu, Lanai, Maui, Kauai and Hawaii. HHSC is organized into five operational regions and provides a broad range of healthcare services including acute, long term, rural and ambulatory health care services. As the fourth largest public health system in the country, HHSC is the largest provider of healthcare in the Islands, other than on Oahu, and is the only acute care provider on the Islands of Maui and Lanai. In fiscal year 2000, HHSC had approximately 3,200 employees, operating 1,250 licensed beds, located on five different islands, with approximately 22,000 in-patient admissions. The Kauai region of HHSC includes WKMC and Kauai Veterans Memorial Hospital and Samuel Mahalona Hospital.

1.5.3 MISSION

The mission of HHSC is to provide and enhance accessible, comprehensive health care services that are quality-driven, customer-focused and cost-effective.

1.6 SIGNIFICANT DATES

The following are the significant dates associated with this IFB:

- | | |
|-----------|--|
| • June 27 | IFB Advertisement and Packet Available |
| • July 7 | Submission deadline for Questions, Interpretations, and Substitution Requests |
| • July 14 | HHSC Response Deadline for Questions, Interpretations, and Substitution Requests |
| • July 21 | Bid Submission Deadline |

1.7 SUBMISSION OF QUESTIONS

Bidder(s) are encouraged to submit written questions pertaining to the IFB. Impromptu (un-written questions) are permitted and verbal answers will be provided during on-site visits and other occasions, but are only intended as general direction and will not represent official HHSC position.

Question(s) must be submitted in writing to the Issuing Officer not later than the "Submission Date", identified in paragraph 1.6, in order to generate an official answer. All written questions will receive an official written response from HHSC and become addendum's to the IFB. The only official position of HHSC is that which is stated in writing and issued in the IFB as addendum's thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon.

1.7 SOLICITATION REVIEW

Bidders should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be made in writing and should be received by the Issuing Officer by the Closing Date for Receipt of Questions as stated above is paragraph 1.6. This will allow issuance of any necessary addendums to the IFB. It will also assist in preventing the opening of bids upon which award may not be made due to a defective solicitation package.

1.8 IFB AMENDMENTS

HHSC reserves the right to amend (by addendums) the IFB any time prior to the closing date for receipt of bids.

1.9 CANCELLATION OF IFB/REJECTION OF BIDS

This IFB may be canceled and any or all bids may be rejected when it is determined to be in the best interests of HHSC.

1.10 PROTESTS

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days after the aggrieved persons knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior to the bid opening date.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract. The notice of award letter(s), if any, resulting from this solicitation shall be posted on the bulletin board of HHSC's Corporate Office, 3628 Kilauea Avenue, Honolulu, Hawaii 96816.

Any and all protests shall be submitted in writing to the HPA, as follows:

THOMAS M. DRISKILL, JR.
Head of the Purchasing Agency
Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816

SECTION 2

SCOPE OF SERVICES

2.1 SCOPE

A. WKMC is looking to rent a radiographic/fluoroscopy (R/F) machine for five (5) years. The CONTRACTOR shall provide rental of such equipment pursuant to the following provisions.

2.1.1 Specifications for R/F system:

1. Overhead Tube Stand
2. 90 degree – 15 degree tilt table with Ion Chambers
3. Digital Fluoro
4. DICOM Worklist, DICOM Store, DICOM Print, DICOM Query--To store images on KVMH Picture Archiving System (PACS) (computer screen), must interface with RIS/PACS
5. 65 KW HF Generator
6. Automatic Exposure Control (AEC)
7. Table weight 300 lbs.
8. 14 inch Image Intensifier
9. Charged Coupled Device (CCD) Camera
10. In room table side FPD monitor
11. Anatomical Programming (APR)
12. Chest Stand with Ion Chambers

2.1.2. Other requirements:

1. Removal and Disposal, and Properly Dispose of all oils, of existing machine which is a 1978 GE Overhead Tube with Fluoroscopy
2. Bid must include shipping, Hawaii General Excise Tax
3. Bid must include installation
4. Bid must include four (4) year service after one (1) year warranty

2.2 TECHNICAL REPRESENTATIVES

The Regional Facilities Office and the Regional Contracting Office have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing Contractor performance; and, approving completed work/services with verification of same for Contractor's invoices. The Regional Facilities Office will also serve as Contract Administrators for "technical" matters throughout the term of the contract. The representative is:

- Ray Poteete
Radiology Supervisor--WKMC

2.3 CONTRACT PERIOD

The term of the contract will be for five (5) years, commencing on or about **August 1, 2006**. Specific commencement and termination dates shall be cited in the contractual agreement upon award and execution of the contract.

SECTION 3

BID PREPARATION & SUBMISSION

3.1 INTRODUCTION

Bidders shall prepare a written bid and sent to HHSC by email or fax with a cover letter. The bid shall address and include the requirements identified in paragraph 3.5. An electronic version of the bid should be emailed to dlane2@hhsc.org. The written bid is the official bid that must meet all submission deadlines.

Bidders shall submit all information requested to qualify the bid for evaluation and consideration for award of contract. **Failure to submit all information requested may be deemed sufficient cause for disqualification and rejection of the bid.**

All bids and other material submitted by Bidder(s) become the property of HHSC and may be returned only at HHSC's option.

3.2 SUBMISSION OF BIDS

Each Bidder may submit only one (1) written bid via email or fax. Alternate bids will not be accepted. All bids are due to Issuing Officer no later than **July 21, 2006**. **Bids received after this date/time are considered "late" and shall not be considered.**

3.3 COSTS FOR BID PREPARATION

Any and all costs incurred in the development of bids, i.e. preparing and submitting, on site visits, travel & lodging, etc. shall be the sole responsibility of the bidder. Additionally, HHSC will not assume responsibility for any costs associated with mechanical failures or other events, which interfere with any product and/or service demonstrations/testing, etc., if conducted.

3.4 DISQUALIFICATION OF BIDS

HHSC reserves the right to consider as acceptable only bids submitted in accordance with all requirements set forth in the IFB and which demonstrate an understanding of the scope of services. **Any bid offering any other set of terms and conditions contradictory to those included in the IFB may be disqualified without further notice.** HHSC reserves the right to ask for clarification of any item in the bid.

A bidder will be disqualified and the bid automatically rejected for any one or more of the following reasons:

- Proof of collusion among bidders, in which case all bids involved in the collusive action will be rejected.

-
- Bidder's lack of responsibility and cooperation as shown by past work or services.
 - The bid shows any noncompliance with applicable law.
 - The bid is conditional, incomplete, or irregular in such a way as to make the bid incomplete, indefinite, or ambiguous as to its meaning.
 - The bid has any provision reserving the right to accept or reject award, or to enter into a contract pursuant to an award, or provisions contrary to those required in the solicitation.
 - Proof of exclusion from participation in federal health care programs, as defined in the Social Security Act (section 1128 and 1128A), and other federal laws and regulations relating to health care.

3.5 BID REQUIREMENTS

Bid requirements includes the completion and submission of the following documents:

- COVER LETTER
- BID
- QUALIFICATIONS AND REFERENCES FORM

3.5.1 COVER LETTER

The cover letter must be on the Bidder's official business letterhead; signed by an individual authorized to legally bind the Bidder; affixed with the organizational seal or notarized; and minimally include information, as identified/requested, on the "sample" letter in APPENDIX A.

3.5.2 QUALIFICATIONS AND REFERENCES FORM

Provide "Qualifications and References" information using the form in APPENDIX B.

3.6 BID "OPTIONAL SERVICES"

Provide description and detailed/total costs for any and all "optional services" offered relative to IFB requirements (include all worksheets and supportive documentation necessary to verify computations).

Optional services are defined as services (and/or goods) that are not included in this IFB and would be considered enhancements, thereof. Costs for "optional services", if selected by HHSC, will be added to the bid amount and will represent the revised and final "not to exceed" maximum payment limit of the contract; or be included in the contract, as an optional service item(s) to be exercised by HHSC by contract amendment, if and when required.

3.7 NONDISCLOSURE OF CONFIDENTIAL DATA

Bidder(s) shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. HHSC cannot guarantee that designated data will be kept confidential. The bids are subject to disclosure rules set forth in Chapter 92F, Hawaii Revised Statutes. The Bidder bears the burden of establishing that the designated data is exempted from the disclosure requirements set forth in chapter 92F.

SECTION 4

BID OPENING & EVALUATION

4.1 BID OPENING

Bids shall be opened publicly and recorded by the Issuing Officer in the presence of one or more witnesses in the Regional Contracts Office, Kauai, HHSC.

4.2 BID EVALUATIONS

Evaluations of bids shall be conducted by HHSC within six (6) working days after bid opening and consist of the following phases:

Phase 1.....Responsive Bid Evaluation

Phase 2.....Responsible Bid Evaluation

Phase 3.....Recommendation for Award of Contract

SECTION 5

AWARD OF CONTRACT

5.1 AWARD OF CONTRACT

Award of contract, if any, shall be made to the responsive and responsible Bidder submitting the lowest total bid amount.

5.2 CONTRACT AWARD NOTIFICATION

The Issuing Officer will inform the successful Bidder of contract award selection within 48 hours of confirmation, thereof. Additionally, an "official" contract award notification letter will be provided to the successful Bidder, at the earliest date.

5.3 CONTRACT REQUIREMENTS

5.3.1 AGREEMENT (CONTRACT) DOCUMENT

The successful Bidder shall be required to enter into a formal written contract and shall be fully executed by HHSC and the successful Bidder ("CONTRACTOR"). This document shall serve as the official, legal contractual instrument between both parties (the "contract"). This document shall incorporate (by attachments or reference) the IFB, with any and all addendum's; the GENERAL CONDITIONS and any SPECIAL CONDITIONS; and, the Bidder's accepted bid. A "sample" contract is included in APPENDIX C. Do not complete or execute this "sample" contract. Necessary contracts provided by the CONTRACTOR may be acceptable if approved by HHSC. These vendor agreements are still subject to the same General and Special conditions outlined below in paragraph 5.3.2.

5.3.2 GENERAL AND SPECIAL CONDITIONS

The **GENERAL CONDITIONS** and **SPECIAL CONDITIONS** (APPENDIX D) are applicable to this IFB and shall be part and whole (attached) to the contract. Bidders are encouraged to review, in detail, the GENERAL and SPECIAL CONDITIONS. Of particular significance, the following provisions are highlighted:

A. GENERAL EXCISE/USE TAX

Refer to paragraph 2.e of the GENERAL CONDITIONS. Work to be performed under this solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS), and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii contractors are advised that the gross receipts derived from this solicitation are subject to the general excise tax (GET) imposed by Chapter 237, HRS, and where applicable to

tangible property imported into the State of Hawaii for resale, subject to the use tax imposed by Chapter 28, HRS.

Pursuant to Section 237-9, HRS, successful Bidder(s) are required to obtain and/or possess a valid General Excise Tax License from the Hawaii State Department of Taxation prior to executing a contractual agreement with a State Agency (reference paragraph 2.e. of the GENERAL CONDITIONS). HHSC enforces this requirement. Refer to the next paragraph for procedures in obtaining Department of Taxation forms and information.

B. TAX CLEARANCE CERTIFICATE

Refer to paragraph 2.e of the GENERAL CONDITIONS. Pursuant to Section 103D-328, Hawaii Revised Statutes, successful Bidder(s) are required to obtain a valid Tax Clearance Certificate from the Hawaii State Department of Taxation and the Internal Revenue Service prior to executing a contractual agreement with a State Agency (reference paragraph 2.e. of the GENERAL CONDITIONS). HHSC enforces this requirement.

To facilitate this requirement, Bidder(s) are encouraged to submit the approved original or certified copy of the tax clearance certificate with the bid. However, if this is not feasible or elected, the certificate should be applied for at DOTAX or the IRS, with the approved original or certified copy submitted to the Issuing Officer as soon as possible. If a completed and valid certificate is not submitted on a timely basis prior to award of the contract, contract award may be delayed and/or a bid otherwise responsive and responsible may be rejected and not considered for award. The certificate is valid for six months from the most recent approval stamp date on the certificate. The certificate must be valid on the date it is received by HHSC.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (rev. 1998) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): <http://www.state.hi.us/tax/tax.html>

DOTAX Forms by Mail: 808 587-7572
1 800 222-7572

DOTAX Forms by Fax: (on Oahu) 808 587-7572
(outside of Oahu) 808 678-0522

Completed tax clearance applications may be mailed to one of the district tax offices listed on the application or faxed to one of the following numbers:

IRS:	808 541-1976
DOTAX: Oahu	808 587-1720 or 808-587-1488

Maui	808 984-8522
Kauai	808 274-3461
Hawaii	808 974-6300

If mailed, out-of state Offerors should send their application to DOTAX's Oahu District Office.

Refer to paragraphs 2.e. and 14. of the GENERAL CONDITIONS for additional information pertaining to Tax Clearance Certificate requirements.

C. PERMITS, CERTIFICATES AND LICENSES

Refer to paragraph 2.d of the GENERAL CONDITIONS. The CONTRACTOR shall obtain and pay for all permits, certificates and licenses required and necessary for the performance of the services specified in the IFB; shall post all notices required by law; and, shall comply with all laws, ordinances and regulations bearing on the conduct of the work specified.

5.3.3 CERTIFICATE OF COMPLIANCE

Pursuant to § 103D-310(c), HRS, CONTRACTORS are required to obtain/posses a valid Certificate of Compliance from the Hawaii State Department of Labor and Industrial Relations (DLIR) prior to executing a contractual agreement with a State Agency. The certificate is valid for six months from the date of issue and must be valid on the date it is received by HHSC.

The Certificate of Compliance shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-122, HAR, Form LIR #27, which is available at http://hawaii.gov/labor/forms/LIR27_11-29-04.pdf (open "Forms", open "LIR#27) or at the neighbor island DLIR District Offices. The application for the certificate is the responsibility of the CONTRACTORS and must be submitted directly to the DLIR and not to HHSC. The DLIR will return the form to the CONTRACTORS who in turn shall submit the form to HHSC.

5.3.4. CERTIFICATE OF GOOD STANDING

Pursuant to § 103D-310(c), HRS, CONTRACTORS are required to obtain/posses a valid Certificate of Good Standing from the Hawaii State Department of Labor and Industrial Relations (DLIR) prior to executing a contractual agreement with a State Agency. The certificate is valid for six months from the date of issue and must be valid on the date it is received by HHSC.

A business entity referred to as a "Hawaii Business", is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, CONTRACTORS shall obtain/posses a Certificate of Good Standing issued by the Hawaii State Department of Commerce and Consumer Affairs Business Registration

Division (BREG). A "Hawaii Business" that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. A CONTRACTOR'S status as sole proprietor and its business street address indicated on the proposal transmittal cover letter (APPENDIX A) will be used to confirm that the CONTRACTOR is a Hawaii Business.

COMPLIANT NON-HAWAII BUSINESS. A business entity referred to as a "Compliant Non-Hawaii Business" is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State. As evidence of compliance, CONTRACTORS shall obtain/posses a Certificate of Good Standing issued by the Hawaii State Department of Commerce and Consumer Affairs Business Registration Division (BREG).

The Certificate of Compliance can be obtained by phone (call 808 586-2727, M-F 7:45--4:30 HST) or by mail (Department of Commerce and Consumer Affairs, Business Registration Division, P.O.Box 40, Honolulu, Hawaii 96810). The certificate is valid for six months from date of issue and must be valid on the date it is received by HHSC.

5.3.5 HAWAII COMPLIANCE EXPRESS

To facilitate the obtaining of the three State of Hawaii Compliance documents: 1) Tax Clearance certificate; 2) Certificate of Compliance, and; 3) Certificate of Good Standing, businesses may register and use Hawaii Compliance Express online services at www.vendors/ehawaii.gov. Any fees associated with the use of this service are the responsibility of the CONTRACTOR.

5.3.6 CONTRACT EXECUTION

Upon receipt of the contract, the successful Bidder shall have ten (10) days to execute and return the contract to the Issuing Officer. Explicit execution instructions will accompany the contract. A copy of the fully executed contract will be provided the CONTRACTOR within seven (7) days of contract execution.

Award of contract may be withdrawn if the successful Bidder is unable to meet contract execution requirements.

5.4 ADDITIONAL SERVICES

During the course of the contract, the CONTRACTOR may be requested to perform additional services, not identified under the "Scope of Services". The services will be within the "general scope" of the basic contract.

If additional services are required, HHSC will provide the CONTRACTOR a written description of the services and request CONTRACTOR's review and acceptance. If accepted, the CONTRACTOR shall submit an acceptance letter including a detailed cost proposal (a firm fix price quote) to perform the services. The cost proposal will be

subject to negotiations, as necessary, to determine and mutually agree upon a "fair and reasonable" price for the performance of the additional services.

The CONTRACTOR will not commence performance of additional services until a Supplemental Agreement (contract amendment) is executed.

APPENDIX A

SAMPLE BID TRANSMITTAL COVER LETTER

Hawaii Health Systems Corporation
Attn: David Lane, Ph.D., Issuing Officer
Kauai Regional Contracts Manager
P.O. 337
Waimea, Hawaii 96796

HHSC:

____ (Name of Business) _____ offers this bid to provide any and all goods and services as set forth in the "Invitation for Bids For Competitive Sealed Bids" to provide "XYZ Services", as set forth in **IFB HHSC FY07-xxx**, for which prices have been set. The price offered herein shall apply for _____ (insert applicable period of time) _____.

It is understood and agreed that we have read HHSC's Scope of Services described in the IFB and that this bid is made in accordance with the provisions of such Scope of Services. By signing this bid, we guarantee and certify that all items included in this bid meet or exceed any and all such Scope of Services.

We agree, if awarded a contract, to provide the goods and services set forth in, and comply with all terms and conditions indicated in the IFB; and, at the price set forth in this bid. Please contact the following individual(s) regarding this bid:

Other applicable information:

Business telephone #: _____ Federal Tax ID #: _____
Facsimile #: _____ Hawaii GET Lic ID #: _____
E-mail address (optional): _____

____ (Name of Business) _____ is a: ___ Individual ___ Partnership ___ Corporation
Other. State of incorporation: Hawaii ___ Other _____

The exact legal name of the business under which the contract, if awarded, shall be executed is: _____.

(Authorized Bidder's Signature, Printed Name/Title)
Encl: Bid

APPENDIX B

QUALIFICATIONS AND REFERENCES FORM

- A. Attach/enclose to this form, all documents necessary to substantiate Bidder's qualifications to meet IFB requirements set forth in paragraph 2.5.A.5. SECTION 2 of the IFB.
- B. Provide in the space below, information concerning a minimum of two (2) past and/or present contracts with Hawaii organizations available and willing to discuss Bidder's qualifications, experience and performance. If Hawaii organizations are not available, provide mainland references.

ORGANIZATION # 1:

Name: _____

Address: _____

Contact Person Name/Title/Phone #: _____

ORGANIZATION # 2:

Name: _____

Address: _____

Contact Person Name/Title/Phone #: _____

ORGANIZATION # 3:

Name: _____

Address: _____

Contact Person Name/Title/Phone #: _____

APPENDIX C

AGREEMENT #: FYXX-XXX

SAMPLE
HAWAII HEALTH SYSTEMS CORPORATION
AGREEMENT FOR GOODS OR SERVICES
DATED:

THIS AGREEMENT, executed on the respected dates of signatures of the parties shown hereafter, between Hawaii Health Systems Corporation, an Agency of the State of Hawaii (hereinafter "HHSC"), by its Chief Executive Officer (hereinafter "CEO"), whose address is 3675 Kilauea Avenue, Honolulu, Hawaii 96816, and _____, (hereinafter "CONTRACTOR"), a _____, under the laws of the State of _____ whose business address and taxpayer identification number are as follows: _____.

RECITALS

- A. The HHSC is in need of the goods or services, or both, described in this Agreement and its attachments.
- B. The HHSC has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.
- C. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the HHSC, taking into consideration price and the evaluation factors set forth in the request.
- D. The HHSC desires to retain and engage the CONTRACTOR to provide the goods or services, or both, as the case may be, and the CONTRACTOR is agreeable to providing said goods or services, or both.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the HHSC and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the HHSC, provide all the services set forth in the request for competitive sealed proposals, **RFP # HHSC FY** ("REQUEST"), and the CONTRACTOR's accepted proposal, including any and all revisions/addendum's/negotiated agreements thereto (collectively "PROPOSAL"), both of which, even if not physically attached to this Agreement, are hereby made a part of this Agreement.
2. Time of Performance. The performance required of the CONTRACTOR under this Agreement shall be executed in accordance with the time period set forth in the REQUEST.
3. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Agreement in a total amount not to exceed _____ DOLLARS (\$_____), including taxes and expenses incurred.
4. Bonds. The CONTRACTOR is not required to provide a performance and/or payment bond.
5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR, is attached and is made a part of this Agreement.
6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached hereto and made a part of this Agreement (or, Any Special Conditions are attached hereto and made a part of this Agreement). In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) Agreement, including all attachments and addenda; (2) Request, including all attachments and addenda; and (3) Proposal.
7. Liquidated Damages. Liquidated damages shall be assessed per incident, in accordance with the terms of paragraph 10 of the General Conditions.

8. Notices. Any written notice required to be given by any party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the CEO shall be sent to: HHSC, President & Chief Executive Officer, HHSC, 3675 Kilauea Avenue, Honolulu, Hawaii 96816. Notice to the "head of the purchasing agency" and/or "Agency Procurement Officer" as denoted in the General Conditions shall be sent to: HHSC, Attn: Procurement Office, 3675 Kilauea Avenue, Honolulu, Hawaii 96816. Notice to the CONTRACTOR shall be sent to the CONTRACTOR's address as indicated in this Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time or actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the HHSC in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

HHSC

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

***CONTRACTOR**

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

*** Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.**

CONTRACTOR'S ACKNOWLEDGMENT

State of _____

County of _____ City of _____

On this _____ day of _____, 200__, before me personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he/she executed said instrument as the free act and deed of the CONTRACTOR.

NOTARY PUBLIC:

SIGNATURE: _____

PRINTED NAME: _____

COMMISSION EXPIRES: _____

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

I certify that the services to be provided under this Agreement by the CONTRACTOR may be performed concurrently with the CONTRACTOR's private business or profession or other private employment, and that it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State or HHSC. Pursuant to section 76-16(15), Hawaii Revised Statutes, the services are exempt from the state civil service.

_____, Date: _____
Thomas M. Driskill, Jr.
Chief Executive Officer
Hawaii Health Systems Corporation

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty percent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State or HHSC, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of _____, CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a State or HHSC employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the State or HHSC within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been a State or HHSC employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, 1) within the past twelve (12) months, served as a State or HHSC employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the State or HHSC if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation,

gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the State or HHSC.

CONTRACTOR

By: _____

Title: _____

Date: _____

*Reminder to FACILITY: if "is" is circled, YOUR FACILITY is required, under section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, ten (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

APPENDIX D

GENERAL CONDITIONS **(NON PHYSICIAN HEALTHCARE SERVICES)**

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GENERAL CONDITIONS

1. COORDINATION OF SERVICES BY THE HHSC.

The "head of the purchasing agency," (which term includes the designee of the head of the purchasing agency), shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Agreement. The CONTRACTOR shall maintain communications with the head of the purchasing agency at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized to enter into contracts for the procurement of services.

2. RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the HHSC shall have a general right to inspect work in progress to determine whether, in the HHSC's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that the HHSC does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the HHSC.

b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the HHSC or the State of Hawaii ("State") for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the HHSC or the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to HHSC or State employees.

c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.

d. The CONTRACTOR shall be responsible for payment of all applicable federal, State, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the HHSC prior to commencing any performance under this Agreement. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under section 103-53, HRS, and paragraph 14 of these General Conditions.

f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. PERSONNEL REQUIREMENTS.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, State, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied. Where the facility is JCAHO accredited, CONTRACTOR agrees to meet applicable JCAHO standards.

4. CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS.

CONTRACTOR warrants that it and none of its employees, agents or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (section 1128 and 1128A), and other federal laws and regulations relating to health care. HHSC reserves the right to verify that the above warranty is true and to immediately cancel this Agreement in the event it is violated.

5. **NONDISCRIMINATION.**

No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, State, or county law.

6. **CONFLICTS OF INTEREST.**

The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

7. **SUBCONTRACTS AND ASSIGNMENTS.**

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the HHSC and (ii) the CONTRACTOR's assignee or subcontractor submits to the HHSC a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR's assignee or subcontractor have been paid.

8. **INDEMNIFICATION AND DEFENSE.**

The CONTRACTOR shall defend, indemnify, and hold harmless the State, the HHSC, the contracting facility, and their directors, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

9. **COST OF LITIGATION.**

In case the State, the HHSC, the contracting facility, and their directors, officers, employees, and agents shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Agreement, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the State, the HHSC, the contracting facility, and their directors, officers, employees, and agents, including attorneys' fees.

10. **LIQUIDATED DAMAGES.**

When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 11 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the HHSC the amount, if any, set forth in this Agreement per calendar day from the date set for cure until either (i) the HHSC reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under paragraph 11.d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay.

11. **TERMINATION FOR DEFAULT.**

a. **Default.** If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.

b. **CONTRACTOR's duties.** Notwithstanding termination of the Agreement and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the State or the HHSC has an interest.

c. **Compensation.** Payment for completed goods and services delivered and accepted by the HHSC shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount. The HHSC may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the HHSC against loss because of outstanding liens or claims and to reimburse the HHSC for the excess costs expected to be incurred by the HHSC in procuring similar goods and services.

d. **Excuse for nonperformance or delayed performance.** The CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within

fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the HHSC under this Agreement. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 11.d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such provision.

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

12. TERMINATION FOR CONVENIENCE.

a. Termination. The Agency procurement officer may, when the interests of the HHSC so require, terminate this Agreement in whole or in part, for the convenience of the HHSC. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when termination becomes effective.

b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the HHSC. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the HHSC in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and
- (3) The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the HHSC has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the HHSC has breached the Agreement by exercise of the termination for convenience provision.

d. Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 12d(3) below.

(2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Agreement price plus settlement costs reduced by payments previously made by the HHSC, the proceeds of any sales of goods and manufacturing materials under subparagraph 11c, and the Agreement price of the performance not terminated.

(3) Absent complete agreement under subparagraph 12d(1) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 12d(1) shall not duplicate payments under this subparagraph for the following:

- (A) Contract prices for goods or services accepted under the Agreement;
- (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have been sustained a loss if the entire Agreement would have completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 12.b. These costs must not include costs paid in accordance with subparagraph 12.d.(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Agreement and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Agreement. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Agreement price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 12.d.(1) and the Agreement price of performance not terminated.

13. COST AND EXPENSES.

Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the DIRECTOR is obtained, reimbursement for subsistence allowable (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for State officers and employees in the executive branch who are excluded from collective bargaining coverage.

14. PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE.

a. Original invoices required. All payments under this Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.

b. Prompt payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

c. Final payment. Final payment under this Agreement shall be subject to section 103-53, HRS, which requires a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State laws against the CONTRACTOR have been paid.

15. FEDERAL FUNDS.

If this Agreement is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Agreement to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds.

16. MODIFICATIONS OF AGREEMENT.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the CONTRACTOR and the HHSC.

b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Agreement shall be permitted.

17. CONFIDENTIALITY OF MATERIAL.

a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the HHSC.

b. All information, data, or other material provided by the CONTRACTOR to the HHSC shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F, HRS.

18. CORPORATE COMPLIANCE PROGRAM.

A description of the Corporate Compliance Program of HHSC is posted on the HHSC internet (www.hhsc.org). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of the HHSC. The CONTRACTOR understands and agrees that employees, agents, and contractors performing any services at any of the HHSC facilities shall be fully subject to such Corporate Compliance Program, as may be amended from time to time, as well as all federal program requirements and applicable policies and procedures of HHSC and its facilities. The Corporate Compliance Program requires periodic training, including an orientation program, of all people who provide financial, business office, personnel, coding, medical records information systems and clinical services in the facility. The

CONTRACTOR agrees to cause its employees, agents, and contractors who provide any services at any financial, business office, personnel, coding, medical records information systems and clinical services at any of the HHSC facilities to participate in the orientation and training programs.

19. BUSINESS ASSOCIATE; PRIVACY AND SECURITY ADDENDUM.

By signing this contract, CONTRACTOR acknowledges that it is a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that it has read the Privacy and Security Addendum, which is posted on the HHSC internet (www.hhsc.org) and is applicable to all Business Associates. Said Privacy and Security Addendum is hereby incorporated by reference and made a part of this agreement as if fully repeated herein. By signing this contract, CONTRACTOR agrees to fully comply with, and be bound by, all the terms set forth in the Privacy and Security Addendum.

20. PUBLICITY.

The CONTRACTOR shall not refer to the HHSC, or any office, agency, or Officer thereof, or any HHSC employee, including the head of the purchasing agency, the DIRECTOR, the Agency procurement officer, the HHSC Board of Directors, or to the services or goods, or both, provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Agreement shall be referred to the Agency procurement officer.

21. OWNERSHIP RIGHTS AND COPYRIGHT.

The HHSC shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the HHSC upon expiration or termination of this Agreement. The HHSC, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

22. LIENS AND WARRANTIES.

Goods provided under this Agreement shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Agreement documents, whichever are greater.

23. ACCESS TO BOOKS AND RECORDS.

If the value or cost of Services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, CONTRACTOR agrees as follows:

a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such Services; and

b. If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, such subcontract shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 23.a. immediately above. The availability of CONTRACTOR's books, documents and records shall be subject at all times to all applicable legal requirements, including without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation. The provisions of paragraphs 23.a. and 23.b. shall survive the expiration or other termination of this Agreement, regardless of the cause of such termination.

24. ANTITRUST CLAIMS.

The HHSC and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to HHSC any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the HHSC under an escalation clause.

25. GOVERNING LAW.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Honolulu, Hawaii.

26. COMPLIANCE WITH LAWS.

The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

27. ENTIRE AGREEMENT.

This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the HHSC and the CONTRACTOR relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the HHSC and the CONTRACTOR other than as set forth or as referred to herein.

28. **SEVERABILITY.**

In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

29. **WAIVER.**

The failure of the HHSC to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the HHSC's right to enforce the same in accordance with this Agreement. The fact that the HHSC specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the HHSC's rights or the CONTRACTOR's obligations under the law.